

19946-A

AMENDMENT NO. 1 TO LEASE AGREEMENT NO. 3342-3

THIS AMENDMENT NO. 1 entered into as of this 22nd day of February, 1996 by and between MDPC Equipment Leasing Corporation, a Delaware corporation (hereinafter called "Lessor") and Tube City, Inc. a Delaware corporation (hereinafter called "Lessee").

W I T N E S S E T H:

WHEREAS, the parties hereto have entered into an Equipment Lease Agreement dated as of February 22, 1996 (the "Lease") providing for the lease by Lessor and the hire by Lessee of the equipment described therein; and

WHEREAS, the parties hereto now desire to amend said Lease to the extent hereinafter set forth.

NOW, THEREFORE, as a further consideration of the mutual covenants contained in the Lease, the parties hereto agree as follows:

1. The following shall be added at the end of the first paragraph of Section 6:

Lessee shall use, operate, maintain and store the Equipment in compliance with all standards of the Association of American Railroads and any other national organization applicable to the use, maintenance or interchange of the Equipment, and shall at its own expense make such alterations to the Equipment as are from time to time required for such compliance.

2. The following shall be added in the fourth line of the second paragraph of Section 6 after the word "Equipment":

(a) the reporting marks assigned to Lessee by the Association of American Railroads, (b) the identification number set forth in the IER for such unit, (c) such other markings as from time to time are required by law or deemed necessary or appropriate by Lessor to protect its ownership interest in the Equipment and (d)...

3. The second sentence of the third paragraph of Section 6 shall be deleted and replaced with the following

The Equipment shall not be used or assigned for use in service involving regular operation or maintenance outside the United States. Lessee shall use the Equipment only for the service and in the manner for which it was designed, and shall not use the Equipment for the transportation of corrosive or radioactive materials, or other materials that might cause damage to the Equipment that could not be practically repaired or would not be covered fully by insurance required or obtained pursuant to this Lease.

4. The second sentence of the second paragraph of Section 15 shall be deleted and replaced with the following:

The storage of the Equipment shall be at Lessee's cost, but Lessor shall bear the risk of loss beginning on the later of the expiration of the Term or the date Lessee makes the Equipment available to Lessor in the condition required by the terms of this Lease.

5. Section 16(a)(3) shall be amended by adding the word "material" prior to the word "representation" and by adding the following at the end of the Section:

(for purposes of this provision the word material shall mean (i) with respect to any representation or warranty made in this Lease or in a document or certificate which was provided to Lessor by Lessee prior the execution of this Lease, material in Lessor's reasonable discretion, (ii) with respect to any representation or warranty which is made in a document or certificate which is provided to Lessor by Lessee after the execution of this Lease, material in the opinion of Lessee's primary lender.

6. Section 16(a)(5) shall be amended by adding the phrase "unless Lessee is diligently and in good faith contesting such payment" after the word "otherwise".

7. Section 16(a)(7) shall be amended by adding the phrase "unless Lessee is diligently and in good faith contesting such judgement with a court of competent jurisdiction" at the end of the section.

8. Section 17 shall be amended by inserting "WITHOUT LESSOR'S PRIOR WRITTEN CONSENT, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD" after the word "THEREIN" in the second line, and by inserting "WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD" at the end of the second sentence.

9. Section 23 shall be deleted and replaced with the following:

23. **Attorneys' Fees.** The non-prevailing party shall pay all costs and reasonable attorneys' fees incurred by the prevailing party in collecting or attempting to collect any sums owed under this Lease or in enforcing any rights or remedies under this Lease including without limitation obtaining possession of the Equipment or seeking relief from stay or other remedies in bankruptcy court.

10. The second sentence of the fourth paragraph of Section 26 shall be deleted.

11. The following shall be added at the end of Section 27:

, including but not limited to those required or permitted pursuant to Section 11303 of Title 49 of the United States Code.

12. Section 28 shall be deleted in its entirety and replaced with the following:

28. **Tax Indemnity.**

(a) Lessee hereby represents and warrants to Lessor (such term for the purpose of this Section 28 meaning Lessor and the corporations with which Lessor consolidates its United States Federal income tax returns) that:

(1) all of the Equipment has a Class Life as set forth in the IER and is depreciable to the full extent of Lessor's cost for such Item of Equipment, as set forth in the IER ("Equipment Cost") pursuant to Section 168 of the Internal Revenue Code of 1986, as amended from time to time, and any Regulations that are or may be promulgated thereunder ("Code"), under the method and over the recovery period set forth in the IER;

(2) the Equipment Cost does not exceed the fair market value of the Equipment and, if the Lessor purchased the Equipment from the Lessee, the Lessee's adjusted basis in the Equipment immediately prior to such acquisition; and

(3) each Item of Equipment will be placed in service on the Acceptance Date;

(b) Lessee covenants to Lessor and agrees that:

(1) it will characterize the relationship herein established as a lease and will treat it as such for all purposes;

(2) it shall not utilize or claim or attempt to utilize or claim the accelerated cost recovery deductions equal to 100% of Equipment Cost provided by Section 168 of the Code and computed under the method and over the recovery period set forth in the IER ("ACRS Deductions") and depreciation deductions equal to 100% of Equipment Cost based on those allowable for property with a Class Life as set forth in the IER using the most accelerated method available under applicable state or local law or Federal alternative minimum tax law ("Depreciation Deductions") on the Equipment in the computation of Federal, state, and local tax returns and reports for each year during the Term of this Lease;

(3) no Item of Equipment will be used predominately outside the continental United States and each Item of Equipment will be used as part of the normal business operations of the Lessee; and

(4) it will neither take any action, nor fail to take any action (including without limitation actions or failures to act otherwise permitted hereunder), which will have the result of causing Lessor to recognize any item of income with respect to this Lease, except amounts received by Lessor which are characterized as rent or additional rent by this Lease ("Other Income") or to lose or to recapture all or any part of the ACRS Deductions or Depreciation Deductions attributable to the Equipment, or its ownership thereof.

In the event any of Lessee's representations, warranties or covenants set forth in this Section 28 prove incorrect for any reason whatsoever at any time or Lessee breaches any covenant hereunder and Lessor recognizes Other Income or loses all or part of the benefit of the ACRS Deductions or Depreciation Deductions attributable to the Equipment or is required to recapture all or any part of the ACRS Deductions or Depreciation Deductions attributable to the Equipment ("Loss"), Lessee shall indemnify and shall pay to Lessor, with respect to each Loss, a sum, which, after deduction of all taxes required to be paid by Lessor in respect of the receipt of such sum under the laws of any Federal, state or local government or taxing authority in the United States (or which would have been required to be paid by Lessor upon such receipt had Lessor had sufficient gross income within the meaning of Section 61 of the Code, or the applicable state or local law, to actually pay such tax) shall be equal to (a) the amount of additional Federal, state, or local income taxes required to be paid with respect to such Loss (or which would have been required to be paid by Lessor for such Loss had Lessor had sufficient

gross income within the meaning of Section 61 of the Code, or the applicable state or local law, to actually pay such tax or derive the benefit of such deduction), plus (b) the amount of any penalties, interest, and other additions to tax (including, but not limited to, any additions to tax because of underpayment of estimated tax) which may be payable by Lessor in connection with the Loss. The amount of payment will be reduced by any savings in Federal income taxes to be realized by Lessor in the future as a result of the Loss discounted to present value using the Discount Rate.

The liability of Lessee to make any indemnity payments hereunder shall become fixed at the time Lessor makes payment of the tax attributable to the Loss, or if Lessor is not required to make payment of tax with respect to the Loss, the date on which Lessor files its tax return for the taxable year in which such Loss occurs, and shall be due and payable within 15 days after receipt by Lessee of written notice from Lessor as to the fixing of such liability. Lessee shall pay interest on any indemnity payment not made when due at the Overdue Rate.

The indemnification provided herein shall survive the expiration or other termination of the Lease.

13. Capitalized terms used and not defined herein shall have the meaning assigned to them in the Lease.

14. Except as specifically amended herein, the Lease shall remain in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to be executed as of the date first written above by their officers or agents thereunto duly authorized.

Lessor:

MDFC Equipment Leasing  
Corporation

By: [Signature]

Printed Name: James H. [unclear]

Title: President - Operations

Lessee:

Tube City, Inc

By: [Signature]

Printed Name: John L. [unclear]

Title: SR VP & Sec & CFO

JCH

COMMONWEALTH OF PENNSYLVANIA )  
 ) SS:  
COUNTY OF ALLEGHENY )

On this, the 19th day of February, 1996, before me, a Notary Public, the undersigned officer, personally appeared John Lipinski, Jr., who acknowledged himself to be the Senior Vice President, Secretary and CFO of Tube City, Inc., and that he as such Senior vice President, Secretary and CFO, being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing the name of the corporation by himself as Senior Vice President, Secretary and CFO.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Dean M. Dingleider  
Notary Public

My Commission Expires:

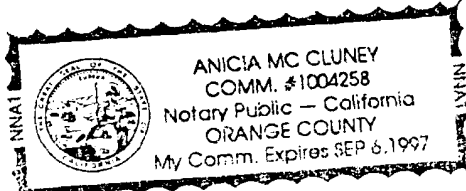
# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5193

State of California  
 County of Los Angeles  
 On 2-20-96 before me, Anicia McCluney, Notary  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared James C. Hamrick  
NAME(S) OF SIGNER(S)

☒ personally known to me - OR - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Anicia McCluney  
SIGNATURE OF NOTARY

## OPTIONAL SECTION

### CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

- ☐ INDIVIDUAL
- ☒ CORPORATE OFFICER(S)  
Dir - Operations  
TITLE(S)
- ☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
- ☐ ATTORNEY-IN-FACT
- ☐ TRUSTEE(S)
- ☐ GUARDIAN/CONSERVATOR
- ☐ OTHER: \_\_\_\_\_

### SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

## OPTIONAL SECTION

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

TITLE OR TYPE OF DOCUMENT \_\_\_\_\_

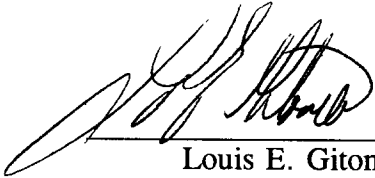
Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

NUMBER OF PAGES \_\_\_\_\_ DATE OF DOCUMENT \_\_\_\_\_

SIGNER(S) OTHER THAN NAMED ABOVE \_\_\_\_\_

**CERTIFICATION**

I, LOUIS E. GITOMER, have compared this copy to the original Amendment No. 1 to Lease Agreement No. 3342-3 dated as of February 20, 1996, and found the copy to be complete and identical in all respects to the original document. I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read 'Louis E. Gitomer', is written over a horizontal line.

Louis E. Gitomer  
February 22, 1996